APPENDIX

I

[Judgment of the Georgia Court of Appeals]

COURT OF APPEALS OF THE STATE OF GEORGIA

Atlanta, April 12, 1956

The Honorable Court of Appeals met pursuant to adjournment.

The following judgment was rendered:

Rose Staub v. City of Baxley

This case came before this court upon a writ of error from the Superior court of Appling county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Gardner, Townsend and Carlisle, JJ., concur.

II

[Opinion of Georgia Court of Appeals]

36161

Rose Staub v. City of Baxley

By the Court:

The trial court did not err in overruling the writ of certiorari.

Rose Staub, hereinafter called the defendant, was arrested for violation of an ordinance of the City of Baxley. Following the arrest of the defendant, she filed a petition for injunction in the Superior Court of Appling County, seeking to have the City of Baxley enjoined from proceeding with the prosecution, and seeking a declaratory judgment adjudging the ordinance void. The superior court refused to grant such relief. This judgment was affirmed by the Supreme Court with one Justice dis-

senting. See Staub v. Mayor & C. of Baxley, 211 Ga. 1 (83 S. E. 2d 606). The City of Baxley then proceeded with the prosecution which resulted in conviction of the defendant in the Mayor's court of the City of Baxley for violation of an ordinance of the City of Baxley. We will hereinafter refer to the City of Baxley as the plaintiff. The ordinance prohibited the solicitation of members for an organization without a permit and license. The defendant applied for and was granted a writ of certiorari, to which the mayor filed his answer. The defendant (plaintiff in certiorari), within the statutory time, filed her exceptions and traverse to said answer to the writ of certiorari. Counsel for both parties stipulated that all issues of fact and law should be submitted to and decided by the judge of the superior court, without the intervention of of a jury.

After the evidence had been submitted and argument had, the judge overruled such exceptions and traverse of the defendant (plaintiff in certiorari) to the answer of the judge to the writ of certiorari, and sustained the answer to the writ of certiorari and dismissed the petition. The question presented to the Court of Appeals was whether or not a certiorari bond was properly signed. This court reversed the judgment of the trial court on this point, holding that the certiorari bond was properly signed, and the case was returned to the trial court to be tried on its merits. (See Staub v. City of Baxley, 91 Ga. App. 650 (86 S. E. 2d 712). The case was so tried. The defendant again applied for the writ of certiorari, which was granted.

The Judge of the Superior Court of Appling County overruled the writ of certiorari and sustained the judgment of the Mayor's Court of the City of Baxley, thus convicting the defendant (plaintiff in certiorari) of the violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without

a permit and license. It is to this judgment that error is assigned here.

For clarity we will quote the ordinance in its entirety: "Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

"Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

"Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may

submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

"Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

"Section V. The granting or refusing to grant such permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

"Section VI. In the e nt that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

"Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

"Section VIII. All ordinances of City of Baxley in conflict with ordinance are hereby repealed.

"Section IX. Should any section or portion of this ordinance be held void, it shall not affect the remaining sections and portions of same.

"Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of September, 1949.

/s/ C. A. WHITAKER, *Mayor*
/s/ J. H. KEELS, *Clerk.*"

The writ of certiorari sets out that the said ordinance is repugnant to and violative of the First Amendment and Fourteenth Amendment to the Constitution of the United States; that such ordinance is repugnant to and violative to paragraph 8 of the National Labor Relations Act and tends to contravent said act and the public policy of the United States as contained in said act by establishing unwarranted conditions upon the right of the defendant to participate in the labor activities secured by the National Labor Relations Act and the public policy of the United States; that the ordinance was founded upon the unreasonable and invalid classification of persons who must pay the confiscatory fee set out in the ordinance; that said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization; that said ordinance is invalid in that it shows on its face that it is a regulatory measure imposing an excessive tax upon a privilege; that the ordinance shows upon its face that it is a device intended to prevent formation of labor unions; that such ordinance is void in that it is repugnant to and violative of Article I, § 1, of the Constitution of the State of Georgia, in that it is not impartial but is unreasonable and arbitrary, and that the petitioner is deprived of her liberty and property without due process of law; that same is a misuse and abuse of the public power of the City of Baxley by subterfuge, thus depriving the defendant and others of their rights.

The evidence submitted on the hearing is substantially as follows: W. A. Schuman, Chief of Police of the City of Baxley, testified that he talked with the defendant; that the defendant stated that she was a paid employee of a

labor organization, and her duties were to solicit members for that organization; that one Mamie Merritt was also so employed; and that the defendant had no permit to solicit members and had made no application for a permit. On cross-examination the witness testified that he did not see the witness solicit any members. Recalled, the witness testified that he did not tell the defendant or Mamie Merritt to get out of town and stay out. On re-cross-examination he testified that he arrested the defendant and Mamie Merritt.

Louise Bowyer, a witness for the plaintiff, testified that she knew the defendant, and that the defendant and Mamie Merritt came to her home and stated that they were trying to get people to join the union. On cross-examination, the same witness stated that she did not see the union card; that neither the defendant nor Mamie Merritt asked the witness for any money; that the witness was not asked to sign a card; and that no membership cards were left with the witness.

Catherine Taylor testified on behalf of the plaintiff that the defendant and Mamie Merritt held a meeting at the home of the witness, and stated that the purpose of the meeting was to get members for the union; that the defendant offered to give the witness a membership card upon the payment of 64 cents per week dues, payable 4 weeks in advance; and that the witness did not join and no cards were left.

Sylvia Dixon, a witness for the plaintiff, testified substantially that she went to a meeting where the defendant and Mamie Merritt were present and that she was asked by the defendant to join the union, and that membership cards were offered to the witness.

Lois Taylor Sharp, Clerk of the City Council and witness for the plaintiff, testified substantially that neither the defendant nor Mamie Meritt made application for a permit as covered by the ordinance, and that no permit

had been issued to them. On cross-examination, the witness testified that she had had no one ask for a permit or a license to solicit members for an organization. She testified that the license fee required for automobile accessories is $100.00; for a bank or banker $150.00; for a billard or pool room $100.00 for the first table and $10.00 for each additional table; $10.00 for a magazine or book agent, etc. (We give these figures to show the comparative amounts assessed against these people and/or business in relation to the permit or license fee for soliciting members for an organization.)

The defendant made the statement that she talked with several ladies about the union.

Gardner, P. J. Counsel for the defendant excepts to the judgment of the court for the following reasons: (1, 2, 3). The evidence is contrary to law, without evidence to support it; (4) "because the ordinance . . . was and is unconstitutional and unreasonable, null and void in that: (a) Said ordinance . . . shows on its face that it is repugnant to and violative of the First Amendment and the Fourteenth Amendment to the Constitution of the United States; (b) said ordinance is repugnant to and violative of section 7 of the National Labor Relations Act . . .; (c) said ordinance is not a valid ordinance in that it denies equal protection of the law to petitioner and others . . .; (d) said ordinance is invalid . . .; (e) said ordinance is an invalid regulation in that it leaves within the discretion of the mayor, etc., the refusing or granting the license required; (f) said ordinance is void in that it is repugnant to and violative of Article I, Section I, paragraph 3 of the Constitution of the State of Georgia in that petitioner is deprived of her liberty and property without due process of law; (i) said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley but shows on its face that it is unreasonable; (j) said ordinance is patently void in that same is a misuse and abuse of the police powers, etc.

It will be noted that counsel for the defendant in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole. In Anthony v. City of Atlanta, 66 Ga. App. 504, 505 (18 S. E. 2d 81), this court said: "It is well settled that one or more sections of an ordinance may be unconstitutional and other sections constitutional; and where the allegations as to the unconstitutionality of an ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance. Glover v. Rome, 173 Ga. 239 (160 S. E. 249), and cit."

It seems that the defendant made no effort to secure a license. Having made no effort to secure a license, the defendant is in no position to claim that any section of the ordinance is invalid or unconstitutional. See Campbell v. City of Thomasville, 6 Ga. App. 212 (18b), (64 S. E. 815), wherein this court said: "One who has been convicted of selling 'near beer' in violation of that ordinance, but who has made no application to the city council and has tendered no bond at all, is not in a position to complain of the illegality of the requirement that the sureties on the bond shall be freeholders. This provision being void, the presumption is that, if he had tendered a bond otherwise sufficient, the city council would have ignored the void provision and would have accepted the bond.

The cases cited by counsel for the defendant will be found to have identified the sections of the ordinance in question and are therefore not in point.

It affirmatively appears that the attack was not made against any particular section of the ordinance as being void or unconstitutional, and that the defendant has made no effort to comply with any section of the ordinance. This being true, it is not necessary to pass upon the

sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case as argued by counsel for the defendant except as hereinabove discussed. In addition to the case cited hereinabove, see Taylor v. Flint, 35 Ga. 124 (3), and Board of Education of Glynn County v. Mayor, of Brunswick, 72 Ga. 353.

The trial court did not err in overruling the writ of certiorari.

Judgment affirmed. Townsend and Carlisle, JJ., concur.